



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 19, 1994

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-560

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27209.

The City of Houston (the "city") has received a request for information relating to a certain murder case, namely Case No. 644434, *State of Texas vs. Darrell Glenn Carr*, originally tried in the 176th District Court, Harris County. Specifically, the requestor seeks "a copy of the complete investigative file, including but not limited to:"

1. Offense report (reports made by any and all officers involved).
2. Any and all follow-up investigative reports.
3. Photographs and videotape.
4. Witness statements.
5. Diagrams and measurements.
6. Any and all other reports pertaining to this particular case.

You have submitted the requested information to us for review. You advise us that the city has made some of the requested information available to the requestor, namely, the information generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of*

Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). However, you seek to withhold from public view the remaining information and claim that sections 552.103(a) and 552.108 of the Government Code except it from required public disclosure.

Section 552.103(a) of the Government Code excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

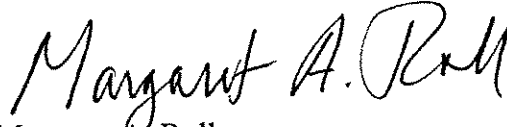
Section 552.103(a) was intended to prevent the use of the Open Records Act as a method of avoiding the rules of discovery used in litigation. Attorney General Opinion JM-1048 (1989) at 4. The "litigation exception" enables a governmental body to protect its position in litigation "by forcing parties seeking information relating to that litigation to obtain it through discovery" procedures. Open Records Decision No. 551 (1990) at 3. For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, *writ ref'd n.r.e.*); Open Records Decision No. 551 at 5. Ordinarily, section 552.103(a) applies only when the litigation asserted as the basis for withholding the information involves or is expected to involve the governmental body which is claiming the exception. Open Records Decision Nos. 392 (1983) at 3; 132 (1976) at 2; 7 (1973) at 2. However, in Open Records Decision No. 469 (1987) at 2, this office concluded that The University of Texas could withhold under section 552.103(a) information that it had made available to the Travis County District Attorney's Office. In that decision, this office determined that in instances involving criminal litigation, the district attorney or other prosecutor is authorized to make the initial determination that information is related to litigation, even though another governmental body not involved in the litigation may be in possession of the requested information. *Id.*; *see also* Open Records Decision Nos. 141, 121 (1976).

You have submitted to us for review an affidavit sworn to by Harris County Assistant District Attorney Scott Durfee, who is currently representing the State of Texas in the criminal appeal pending against Mr. Carr brought from Mr. Carr's conviction for capital murder. Mr. Durfee advises us that the requested information relates to the ongoing criminal prosecution of Mr. Carr. Having examined the information submitted to us for review, we conclude that you may withhold it in its entirety under

section 552.103(a) of the Government Code.¹ As we resolve this matter under section 552.103(a), we need not address the applicability of section 552.108 at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 27335

cc: Mr. David Wood
Legal Investigator
Fisher, Gallagher & Lewis, L.L.P.
First Interstate Bank Plaza
1000 Louisiana
Houston, Texas 77002
(w/o enclosures)

¹In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).